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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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October 2, 1996

BY HAND

William F. Caton, Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

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575 MADISON AVENUE
NEW YORK, NY 10022-2585

NEW JERSEY OFFICE
ONE GATEWAY CENTER
NEWARK, NJ 07102-5397

SPECIAL COUNSEL
JEROLD L. JACOBS

Re: MM Docket No. 94-155
FM Table of Allotments
Big Pine Key, Key Colony Beach,
Naples, and Tice, Florida

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Enclosed herewith for filing, on behalf of Palm Beach Radio Broadcasting, Inc. and Gulf Communications Partnership, are an original and four (4) copies of their "MOTION TO DISMISS OR STRIKE SPANISH BROADCASTING SYSTEM'S DEFECTIVE COUNTERPROPOSAL" in the above-referenced proceeding.

Please direct all inquiries and communications concerning this matter to the undersigned.

Very truly yours,


Jerold L. Jacobs

Enc.

cc: As on Certificate of Service (all w/enc.)

FILED
OCT 10 1996
FBI - MIAMI

Only

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

OCT 2 1996

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 94-155
Table of Allotments,)	
FM Broadcast Stations)	
(Big Pine Key, Key Colony Beach,)	RM-8486
Naples, Tice, <u>Indiantown, Fort Myers</u>)	RM-8802
<u>Villas, Clewiston, and Jupiter,</u> ¹ Florida))	RM-8803

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: Chief, Allocations Branch

MOTION TO DISMISS OR STRIKE
SPANISH BROADCASTING SYSTEM'S DEFECTIVE COUNTERPROPOSAL

PALM BEACH RADIO BROADCASTING, INC. ("Palm Beach"), licensee of Station WPBZ(FM), Indiantown, Florida, and **GULF COMMUNICATIONS PARTNERSHIP** ("Gulf"), permittee of Station WAAD(FM), Tice, Florida (together, "the Parties"), by their attorneys, pursuant to §1.420(d) of the Commission's Rules, hereby move that the untimely counterproposal filed in this proceeding on June 10, 1996 by Spanish Broadcasting System of Florida, Inc. ("SBS"), licensee of Station WZMQ(FM), Key Largo, Florida be dismissed or stricken as procedurally and technically defective and be given no consideration in this proceeding. In support whereof, the Parties show the following:

I. Background

1. The subject Motion continues the Parties' ongoing efforts to assist the Commission in simplifying this complex proceeding and reaching an expeditious conclusion consistent with administrative due process and the public interest. Motions to dismiss or strike defective pleadings, such as SBS's counterproposal, are routinely considered on the merits by the

¹ The communities of Indiantown, Fort Myers Villas, Clewiston, and Jupiter, Florida have been added to the caption.

Commission and do not require special permission under §1.415(d) of the Rules to be filed. See, e.g., FM Table of Allotments (Rocky Mount, Bassett and Stanleytown VA), 10 FCC Rcd 9285 n.4 (Mass Media Bur. 1995) (motion to strike denied on the merits). In Section II, the Parties will demonstrate why SBS's counterproposal should be dismissed or stricken, and in Section III, the Parties will describe the remaining docket-simplifying steps upon which they are still working and which they hope will be completed within the next 30 days.

2. This rulemaking proceeding was initiated by Notice of Proposed Rule Making and Order to Show Cause ("NPRM"), 10 FCC Rcd 24 (Mass Media Bur. 1994). The NPRM (*id.* at 26 ¶17 and Appendix ¶3) specifically included well established procedural ground rules for FM channel rulemaking proceedings: (a) the deadline for comments and counterproposals was February 17, 1995; (b) counterproposals "will be considered if advanced in initial comments....They will not be considered if advanced in reply comments"; and (c) "The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved".

3. On the February 17, 1995 comment/counterproposal deadline, Palm Beach's predecessor (Amaturo Group, Ltd.) and three other Florida broadcast entities -- WSUV, Inc., licensee of Station WJST(FM) (formerly WROC), Fort Myers Villas, Florida, GGG Broadcasting, Inc., licensee of Station WJBW(FM), Jupiter, Florida, and Glades Media Company, licensee of Station WAFC-FM, Clewiston, Florida -- teamed up as "Joint Petitioners" to file a two-alternative counterproposal (RM-8803), and Gulf filed its own counterproposal (RM-8802) to its earlier petition for rulemaking. Most importantly, SBS did not file any pleading on or before the February 17, 1995 deadline -- or for the next 16 months.

4. A Public Notice (Report No. 2134, "Petitions for Rulemaking Filed")("Public Notice"), released May 24, 1996, noted (at page 2) that on May 15, 1996, the Parties filed an "amendment and joint resolution to [their] counterproposals," stated (id.) that the Commission was soliciting comment only on the "amendment and joint resolution," and set June 10, 1996 as the deadline for "reply comments" (i.e., 15 days after the date of the Public Notice). On June 10, 1996, in accordance with the Public Notice, the Parties filed "Joint Counterproposal Reply Comments"; however, SBS filed a pleading which is unabashedly entitled a "Counterproposal".² As the Parties will now demonstrate, SBS's "Counterproposal" is fatally defective procedurally and also contains erroneous technical data which provide an additional independent basis for dismissal.

II. SBS's Counterproposal is Fatally Defective Procedurally and Technically

5. SBS's Counterproposal essentially maintains that: (a) The Commission should issue a Further Notice of Proposed Rulemaking ("FNPRM") in this proceeding to "allow additional comments and consideration" of the proposals put forth by the Parties, since "SBS, and other members of the public, have not had adequate notice of the Tice proposal which has now been noted for the first time in the May 24, 1996 Public Notice" (Counterproposal at ¶¶'s 6, 8); and that (b) SBS's counterproposal that Channel 292C3 should be allotted to Tice, instead of Channel 292C2 or 229C2, would better serve the public interest (id. at ¶¶'s 7-8). SBS is legally and factually wrong on both counts.

² The full title of Spanish's pleading is "Request for Immediate Review of Staff Action and Counterproposal of Spanish Broadcasting System of Florida, Inc.".

**A. Adequate Notice and Time for Comment
Have Already Been Given by the Public Notice**

6. The Counterproposal mistakenly and paradoxically asserts (at ¶6) that the "amendment and joint resolution" upon which the Public Notice invited comment (see Paragraph 4, supra) needed to have been advanced in a "counterproposal as to which a public notice was issued and for which comments were solicited by the Commission". The Parties submit that the May 24, 1996 Public Notice is the very public notice which SBS has in mind! In other words, the "amendment and joint resolution" have been the subject of a public notice, that Public Notice solicited "comments," the 15-day period allowed by the Public Notice is the standard period for comments on counterproposals, SBS's Counterproposal was filed as a comment in response to the Public Notice, and SBS did not request any additional time to file its pleading. SBS has failed to cite any rule or case precedent supporting the need for a FNPRM. Given the fully adequate administrative due process procedures that have already been followed by the Commission, nothing more is required.

7. As the Public Notice stated, the Parties amended their original counterproposals in a jointly-filed May 15, 1996 "Supplement to Joint Reply Comments Mooting Sole Objection to Joint Resolution" ("Supplement"). In the Supplement, the Parties requested that the "Joint Resolution" contained in their March 6, 1995 "Joint Reply Comments" in this proceeding -- as restated in the Supplement -- alone should be placed on public notice as a "global solution" to the mutually exclusive allotment proposals in this proceeding. The Public Notice properly complied with the Parties' request. In other words, the manner in which the Public Notice focused comment on the "amendment and joint resolution" was fully justified by the Parties' withdrawal in the Supplement of those parts of their original counterproposals that are

incompatible with the "Joint Resolution". The Joint Petitioners and Gulf withdrew their incompatible allotment proposals for Estero and Palm River, Florida in their Joint Reply Comments (at ¶10) and reiterated that withdrawal in the Supplement. Hence, SBS's vague claim that the public should still be allowed to express interest in frequencies at Estero and Palm River should be rejected out of hand. SBS cannot demand the right to comment on a counterproposal which, as here, the proponents have withdrawn.

**B. SBS's Counterproposal is
Too Late and Technically Flawed**

8. It is well established that untimely counterproposals will not be accepted. See, e.g., FM Table of Allotments (Chico CA), 6 FCC Rcd 4292, 4294 n.1 (Mass Media Bur. 1991)(late-filed counterproposals are prohibited by §1.420(d) of the Rules and NPRM's Appendix). SBS has candidly and accurately described its June 10, 1996 pleading as a "counterproposal". However, the NPRM established February 15, 1995 as the absolute deadline for counterproposals (see Paragraph 2, supra). It is therefore obvious that SBS's filing is woefully late. To the best of the Parties' knowledge, the Commission has never waived its filing deadlines for counterproposals, and SBS has cited no cases to the contrary. Therefore, SBS's Counterproposal should be dismissed.

9. Second, although the Commission has held that "it is appropriate to suggest in reply comments alternate channels for communities at issue in a proceeding," see FM Table of Allotments (Corpus Christi and Three Rivers TX), 11 FCC Rcd 517 ¶5 (Mass Media Bur. 1996), it is also well established that, even in "reply comments," "[a] conflicting proposal involving a new community submitted after the close of the comment period is not considered in the proceeding". See Implementation of BC Docket No. 80-90, 5 FCC Rcd 931, 932 n. 4

(1990). In SBS's case, its Counterproposal (at ¶7) states that SBS is only proposing to assign Channel 292C3, instead of Channel 292C2, at Tice, Florida, in order to "allow Station WZMQ(FM) at Key Largo to apply for a one-step upgrade from Channel 292C2 to Channel 292C1". However, to support its technical proposal, SBS relies on an accompanying Engineering Statement prepared by Herman E. Hurst, Jr. of Carl T. Jones Corporation, and that Statement specifically proposes (at page 6) that the Table of Allotments be changed to allot Channel 292C1 at Key Largo and Channel 292C3 at Tice. Thus, it is clear that SBS is not merely proposing an "alternate channel" for Station WAAD(FM) at Tice, but, rather, is proposing involving a new community -- Key Largo -- in this proceeding. (Neither the NPRM nor any previous counterproposal nor the Supplement proposed any allotment change for Key Largo.) SBS's attempt to add another community for allotment purposes at this late date is a second fatal procedural defect in its Counterproposal, which also requires dismissal of the Counterproposal. See Implementation of BC Docket No. 80-90, supra.

10. Finally, as to technical defects in SBS's Counterproposal, attached hereto as Exhibit A is the Engineering Statement of Clarence M. Beverage of Communications Technologies, Inc. ("Beverage Statement"). The Beverage Statement concludes -- with the aid of an accompanying affidavit by Airspace Consultant John P. Allen -- that there are two fatal technical defects in SBS's Counterproposal:

- (a) The population data supplied by SBS to demonstrate the purported public interest benefits of its Counterproposal are erroneous because they are not derived from the proposed non-short spaced allotment coordinates of N.L. 24-57-20, W.L. 80-34-50 cited in Footnote 3 of SBS's accompanying Engineering Statement, in accordance with established Commission requirements, see FM Table of Allotments (Edenton NC et al.), 11 FCC Rcd 7531, 7533-34 ¶7 (Mass Media Bur. 1996), but rather are derived from WZMQ's currently licensed §73.215 site location (Beverage Statement at 2); and

- (b) While SBS posits a Channel 292C1 facility with a tower height exceeding 500 feet AGL, the FAA will not approve any such height between Key Largo and Marathon, Florida, so that it is necessary to posit a realizable tower height of 500 feet AGL in order to calculate accurate population data for SBS's Counterproposal (Beverage Statement at 2-3; Allen Affidavit at 3), citing FM Table of Allotments (Greenup KY and Athens OH), 4 FCC Rcd 3843, 3845 n.12 (Mass Media Bur. 1989).

When the necessary corrections of site coordinates and antenna height are made to SBS's showing, Mr. Beverage concludes (id. at 3) that the population gains which SBS attributes to its proposed Channel 292C1 upgrade are so minuscule (20,716 persons) that, when combined with the effect of allotting Channel 292C3 to Station WAAD(FM) at Tice (instead of Channel 292C2 or Channel 229C2), the result is a net audience loss of up to 54,037 persons under SBS's Counterproposal -- not the 497,676 person gain suggested by SBS.

11. The Commission should draw two important adverse conclusions from the above-described technical defects in SBS's Counterproposal. First, and most importantly, SBS's Counterproposal should be dismissed as fatally defective. See, e.g., FM Table of Allotments (Fort Bragg CA), 6 FCC Rcd 5817, 5817 n.2 (Mass Media Bur. 1991) (counterproposals must be technically correct and substantially complete when filed). Second, the public interest benefits asserted by SBS in its Counterproposal (at ¶8) are completely fallacious, since the net effect of granting a Channel 292C1 allotment to SBS and Key Largo and limiting Station WAAD to a Class C3 upgrade at Tice, instead of the Class C2 upgrade which the Parties propose, is to produce a net population loss -- not the substantial population gain which SBS asserted (see Paragraph 10, supra). In sum, SBS's Counterproposal has no net public interest benefits and should be rejected on that ground alone.

III. Remaining Docket-Simplifying Steps

12. In their Joint Counterproposal Reply Comments (at ¶8), the Parties explained that Meridian Broadcasting, Inc. ("Meridian"), proposed assignee of Station WNOG(FM), Naples, Florida, filed "Reply Comments" in this proceeding on June 10, 1996, which state (at page 1) that "Meridian has no objection to operating Station WNOG-FM on Channel 292A and supports resolution of this proceeding in a manner that changes the WNOG-FM operating frequency to Channel 292A". The Parties welcomed Meridian's willingness to move to Channel 292A, because that allotment permits Station WAAD to upgrade from Channel 229A to Channel 229C2 at Tice (which it prefers), instead of to Channel 292C2. Therefore, assuming that the Commission grants Meridian's assignment application (which is the subject of a pending Petition to Deny), the Parties urged the Commission to allot Channel 229C2 to WAAD and Channel 292A to WNOG in this proceeding.

13. The Parties now reiterate their hope that, for the reasons stated in Paragraph 12 above, the Commission will allot Channel 229C2 to WAAD at Tice and Channel 292A to WNOG at Naples.³ The fact that SBS's Counterproposal would be mutually exclusive with allotting Channel 292A to Naples is another reason that SBS's defective Counterproposal should be dismissed forthwith.

14. Moreover, the Parties have been conferring with WSUV, Inc. about the alternative allotments it suggested for Station WJST, Fort Myers Villas, Florida, in its June 10, 1996 "Reply Comments". WSUV, Inc. has informally advised the Parties that it is willing to accept

³ Making these channel changes and involving Station WNOG at Naples are fully consistent with FM Table of Allotments (Corpus Christi and Three Rivers TX), supra, because Naples/WNOG was put into issue in the original NPRM herein.

the Channel 275C2 allotment contained in the "amendment and joint resolution" and withdraw its Reply Comments if the Commission allots Channel 229C2 to WAAD at Tice, instead of Channel 292C2. Furthermore, Commission approval of the assignment of Station WNOG to Meridian will moot the previous objections of WNOG's soon-to-be former licensee (Palmer Broadcast Group) to moving WNOG from Channel 228A.

15. Finally, as to the June 10, 1996 "Comments" filed by Sterling Communications Corp. ("Sterling"), licensee of Station WSGL(FM), Naples, Florida, which are yet another untimely counterproposal, the Parties will file a motion to dismiss within the next few days. If the Commission grants the Parties' motions to dismiss SBS's and Sterling's counterproposals, and grants WNOG's assignment to Meridian, and if WSUV, Inc. withdraws its Reply Comments, the stage will be set for grant of the "amendment and joint resolution" (with the Tice/Naples frequency changes), which is the Parties' ultimate goal.

IV. Conclusion

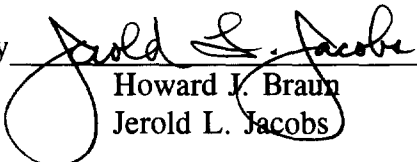
16. The "amendment and joint resolution" in the Public Notice will permit five stations -- WPBZ, WJST, WAFC, WJBW, and WAAD -- to upgrade their facilities, including four upgrades from Class A to wide-area Class C2 or Class C3 service. Commission precedent clearly favors channel allotment resolutions which maximize the number of communities that will have upgraded facilities. See Archilla-Marcocci Spanish Radio Co., 101 FCC 2d 522 (Rev. Bd. 1985), rev. denied, FCC 86-271 (Comm'n May 30, 1986)(§307(b) of the Communications Act is better served by granting proposals to serve three communities instead of one). Moreover, the five upgrades will result in the availability of upgraded radio service to at least an additional 1,229,204 persons in the State of Florida. SBS's Counterproposal is procedurally and

technically defective, and, if granted, it would not provide nearly the same upgrade and increased audience advantages as the "amendment and joint resolution".

WHEREFORE, in view of the foregoing, the Parties respectfully ask the Commission to dismiss or strike SBS's defective Counterproposal.

Respectfully submitted,

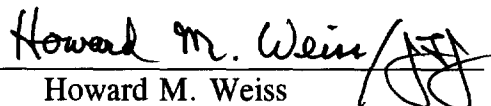
PALM BEACH RADIO BROADCASTING, INC.

By  _____
Howard J. Braun
Jerold L. Jacobs

ROSENMAN & COLIN LLP
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Its Attorneys

GULF COMMUNICATIONS PARTNERSHIP

By  _____
Howard M. Weiss

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North 17th Street
11th Floor
Rosslyn, VA 22209
(703) 812-0400

Its Attorneys

Dated: October 2, 1996

**ENGINEERING STATEMENT
CONCERNING COUNTERPROPOSAL OF
SPANISH BROADCASTING SYSTEM
OF FLORIDA, INC.
IN THE MATTER OF
AMENDMENT OF SECTION 73.202(b)
TABLE OF ALLOTMENTS
FM BROADCAST STATIONS
(BIG PINE KEY, KEY COLONY BEACH,
NAPLES, TICE, INDIANTOWN, FORT
MYERS VILLAS, AND JUPITER, FLORIDA)
MM DOCKET NO. 94-155**

SEPTEMBER 1996

**ENGINEERING STATEMENT
CONCERNING COUNTERPROPOSAL OF
SPANISH BROADCASTING SYSTEM
OF FLORIDA, INC.
IN THE MATTER OF
AMENDMENT OF SECTION 73.202(b)
TABLE OF ALLOTMENTS
FM BROADCAST STATIONS
(BIG PINE KEY, KEY COLONY BEACH,
NAPLES, TICE, INDIANTOWN, FORT
MYERS VILLAS, AND JUPITER, FLORIDA)
MM DOCKET NO. 94-155**

SEPTEMBER 1996

SUMMARY

The following statement has been prepared on behalf of **Palm Beach Broadcasting, Inc. ("Palm Beach")**, licensee of FM station WPBZ, Indiantown, Florida. The purpose of this statement is to respond to an untimely June 10, 1996 counterproposal in the above noted proceeding filed by Spanish Broadcasting System of Florida, Inc. ("Spanish") wherein certain public interest benefits are suggested should Channel 292C1 be allotted to Key Largo, Florida.

It will be demonstrated herein that the population gains which Spanish attributes to the Channel 292C1 allotment in its counterproposal are not realizable and should not be considered in this proceeding. To perform this analysis, this statement references an Application for Construction Permit filed by Spanish to move WZMQ to Channel 292C2, FCC File Number BPH-960718IA, accepted for filing on August 12, 1996.

SPANISH CHANNEL 292C1 COUNTERPROPOSAL

In its June 10, 1996 filing, Spanish states that Channel 292C1 should be allotted to Key Largo in place of Channel 292C2, that Channel 292C3 should be allotted to Tice, Florida in place of Channel 229C2 and that WNOG in Naples should remain on Channel 228A.

Spanish then goes on to analyze the population gains associated with this proposal as follows:

		<u>60 dBu Contour</u>
WAAD (CP)	Channel 229A Tice, FL	270,142 persons
WAAD	Channel 292C3	<u>429,930</u> persons
	Gain	159,788 persons
		<u>60 dBu Contour</u>
WZMQ (App)	Channel 292C2	116,840 persons
WZMQ (Proposed)	Channel 292C1	<u>614,516</u> persons
	Gain	497,676 persons
WAAD	Channel 292C2	501,302 persons
	Channel 292C3	<u>429,930</u> persons
	Loss	(71,372) persons
	Net gain associated with counterproposal	426,304 persons

It is established Allocations Branch policy that population data submitted in Rule Making proceedings must be for allotment coordinates that meet *Section 73.207* standards. Population data for *73.215* facilities is not acceptable in a Rule Making environment. However, a review of the Spanish Application for CP to change from Channel 280C2 to Channel 292C2 led the affiant to realize that all population data submitted by Spanish in its counterproposal is for WZMQ's currently licensed, *Section 73.215* site location and not the proposed non-short spaced allotment coordinates of N.L. 24-57-20, W.L. 80-34-50 cited in Footnote 3 of the Spanish engineering statement supporting its counterproposal. Based on this fact alone, the Spanish petition should be dismissed as totally flawed.

FAA CONSIDERATIONS & CORRECTED POPULATION ANALYSIS FOR SPANISH COUNTERPROPOSAL

In an FM Channel Rule Making proceeding, (Greenup, Kentucky and Athens, Ohio) 4 FCC Rcd 3843, 3845 N.12 (Mass Media Bureau 1989), the Commission established a Policy in Rule Making proceedings that Class C allotments were to be evaluated at realizable HAAT's. This decision was based, in part, on the established difficulty in obtaining FAA approval for tall towers. **Palm Beach** believes that this same

process should apply to Class C1 facilities if it is known that FAA restrictions clearly prohibit the implementation of a full Class C1 facility HAAT.

Attached to this filing is an affidavit of John P. Allen, Airspace Consultant. Mr. Allen concludes that the greatest tower height achievable between Key Largo and Marathon, Florida, under FAA guidelines, is 500 feet AGL. This is the area in which Channel 292C2 and Channel 292C1 allotment coordinates must be located. The most easterly allotment coordinates available for Channel 292 are as follows:

<u>Allotment</u>	<u>N. Latitude</u>	<u>W. Longitude</u>	<u>kM west of Key Largo</u>
Ch 292C2/C1	25-06-00	80-31-27	8.2 kM at 277.8°
Ch 292C1	24-57-20	80-34-50	20.3 kM at 222.8°

Based on a conservative transmitter plat design using a 6-bay full wave spaced FM antenna (this is what Spanish proposes in its pending Application for CP), the radiation center for a 500' AGL tower would be 30 feet below the top of the structure or 469 feet AMSL (143 meters AMSL) and 143 meters HAAT.

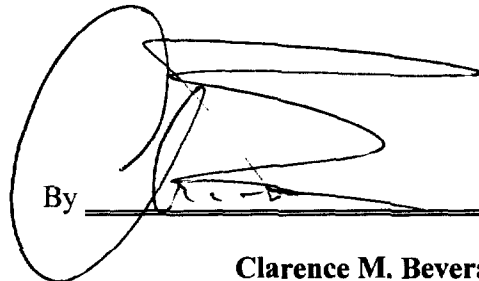
The coordinates in the FCC database for Channel 292C2 at Key Largo, Florida are N.L. 24° 57' 20" and W.L. 80° 34' 50", and Spanish proposes these coordinates for Channel 292C1 on the basis that WAFC will be moved to Channel 258C3. Therefore, using established FCC practices and procedures, and an antenna radiation center of 143 meters AMSL, the correct population data within the 60 dBu contour for Spanish's counterproposal was found to be as follows:

			<u>Population</u>	
Channel 292C2	WZMQ	50 kW @ 143 m HAAT	28,350	persons
Channel 292C1	WZMQ	100 kW @ 143 m HAAT	<u>49,066</u>	persons
		Gain	20,716	persons
Channel 229C2	WAAD	Tice, Florida	---	504,683 persons
Channel 292C2	WAAD	Tice, Florida	501,302	persons
Channel 292C3	WAAD	Tice, Florida	<u>429,930</u>	persons
		Loss	(71,372)	persons
		Net Loss	(50,656)	persons
				(54,037) persons

Based on a correct analysis of the Spanish counterproposal, it is seen that a 54,037 person loss in service is associated with the counterproposal for the substitution of Channel 292C3 for Channel 229C2 at Tice and a 50,656 person loss for the substitution of Channel 292C3 for Channel 292C2 at Tice -- not the 497,676 person gain suggested by Spanish for its Channel 292C1 counterproposal.

CONCLUSION


The foregoing was prepared on behalf of **Palm Beach Broadcasting, Inc.** by Clarence M. Beverage of *Communications Technologies, Inc.*, Marlton, New Jersey, whose qualifications are a matter of record with the Federal Communications Commission. The statements herein are true and correct of his own knowledge, except such statements made on information and belief, and as to these statements he believes them to be true and correct.

By 

Clarence M. Beverage
for Communications Technologies, Inc.
Marlton, New Jersey

SUBSCRIBED AND SWORN TO before me,

this 27th day of September, 1996,

, NOTARY PUBLIC

ESTHER G. SPERBECK
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES OCT 15, 1997

John P. Allen

Airspace Consultant

Telephone
(904) 261-6523
FAX (904) 277-3651

P.O. Box 1008
Fernandina Beach, FL 32035-1008

STATE OF FLORIDA)

)

COUNTY OF NASSAU)

AFFIDAVIT OF JOHN P. ALLEN

I, John P. Allen, being first duly sworn, do hereby depose and state that I am an Airspace Consultant in private practice, with offices at 905 south 8th Street, Fernandina Beach, Florida. My qualifications are a matter of record with the Federal Aviation Administration (FAA) and the Federal Communications Commission (FCC). A brief resume is attached hereto as "Attachment A."

I have been retained by Palm Beach Broadcasting, Inc. ("Palm Beach"), licensee of Radio Station WPBZ-FM, Indiantown, Florida, to conduct an independent aeronautical evaluation of a proposed antenna tower location area near Key Largo, Florida in support of a Channel 292C1 application. Specifically, I was requested to determine whether or not the proposed antenna tower location area specified within the Counterproposal of Spanish Broadcasting System of Florida, Inc., ("Spanish") would have substantial adverse effect to the Florida navigable airspace.

My independent aeronautical evaluation was conducted in accordance with the standards for determining obstructions to the navigable airspace as set forth in Subpart C of Part 77 of the Federal Aviation Regulations. Spanish's proposed antenna structure located near Key Largo, is located at Coordinates: Latitude 24-57-20 North - Longitude 80-34-50 West (North American Datum - 1927), cited in Footnote 3 of the Spanish engineering statement supporting its counterproposal. My initial evaluation was limited to a proposed height of 500 feet above ground level. At a proposed height of 500 feet above ground level, the proposal would not exceed the standards of Part 77.

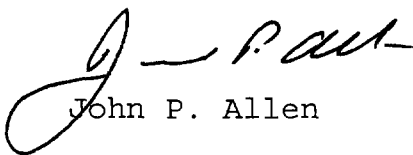
However increasing the proposed height above 500 feet above ground level, a height that would exceed the standards of Part 77, disclosed a serious aeronautical concern because of proximity to potential VFR Routes. When a structure is proposed at a height in excess of 500 feet AGL, you must consider the potential of being within a VFR Route. FAA defines VFR Routes as airspace available for visual flight rule (VFR) en route navigation in accordance with the criteria contained within FAR Part 91. VFR Routes consist of identifiable well defined natural or man-made landmarks (highways, power lines, railroads, etc.), specific VOR radials (Federal Airways), and airport transition (direct routes between airports). The potential for U.S. Highway 1 and the coastline to be considered as a VFR Route is very high, as this

is the only readily available natural or man-made landmark in the Key Largo area for pilots to visually identify and navigate with.

Proposed construction within an identified VFR Route (2 statute miles on either side of the route centerline) is limited by FAA to 500 feet AGL.

In conclusion, it is my professional opinion, that the proposed site located near Key Largo at a height of 500 feet AGL would be acceptable to FAA and would receive a Determination of No Hazard to Air Navigation. However, any height above the 500 feet AGL would not be acceptable to the FAA and based upon their findings, would warrant a Determination of Hazard to Air Navigation.

Respectfully submitted,


John P. Allen

Subscribed and sworn to before me, the undersigned Notary Public, this 27th day of September, 1996, by the within-named John P. Allen, well known to me to be the person executing this document.


Notary Public

My Commission Expires:



Mary C. Lowe
MY COMMISSION # CC496989 EXPIRES
October 23, 1999
BONDED THRU TROY FAIR INSURANCE, INC.

ABOUT JOHN P. ALLEN

PROFESSIONAL EXPERIENCE:

Airspace Consultant 1981-Present: Conducts aeronautical evaluations for proposed construction or alteration of structures; files appropriate forms with the Federal Aviation Administration; amends aeronautical surfaces when required; conducts negotiations and provides testimony on behalf of sponsors with FAA, FCC or local governmental bodies concerning technical matters relating to Aviation Safety.

FAA Air Traffic Controller 1968 to 1981

U. S. Air Force Air Traffic Controller 1964 to 1968

PROFESSIONAL ACTIVITIES:

Representative to the National Transportation Safety Board as an expert in air traffic control 1975 to 1977

Chairman of the Facility Air Traffic Technical Advisory Committee 1975 to 1977

Representative to the National Aviation Safety Council 1977 to 1981

Member of the Society of Broadcast Engineers

Member of the Fernandina Beach Airport Advisory Commission

Associate Membership:

Association of Federal Communication Consulting Engineers

National Association of Broadcasters

EDUCATION:

Bachelor of Science Degree. Management/Small Business Administration 1977, Jones College, Jacksonville, Florida

Professional Certifications: Air Traffic Controller

CERTIFICATE OF SERVICE

I, Yvonne Corbett, a secretary in the law offices of Rosenman & Colin LLP, do hereby certify that on this 2nd day of October, 1996, I have caused to be mailed, or hand-delivered, a copy of the foregoing **"MOTION TO DISMISS OR STRIKE SPANISH BROADCASTING SYSTEM'S DEFECTIVE COUNTERPROPOSAL"** to the following:

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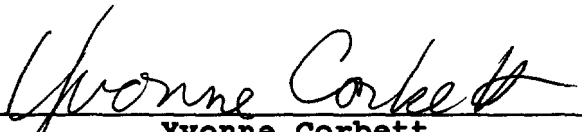
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